

From: David Bacher
To: Microsoft ATR
Date: 1/25/02 7:45pm
Subject: Microsoft Settlement

To Judge Kollar-Kotelly and the United States Department of Justice,

I would like to comment on the proposed Microsoft Settlement as allowed under the Tunney Act.

As background, I am a software engineer with 6 years of professional experience developing on Unix and Macintosh platforms.

I have read the Findings of Fact and the Revised Proposed Final Judgement as posted on www.usdoj.gov and I have come to the conclusion that the Proposed Final Judgement does very little to limit Microsoft's acknowledged monopoly power.

Impact on Open Source Software

As a proponent of (and contributor to) open source software, I am concerned by the language that allows Microsoft to conceal APIs selectively from competitors simply because it does not agree with their business model.

To quote Ralph Nader's open letter
(<http://www.cptech.org/at/ms/rnj12kollarkotellynov501.html>)

"What is surprising is that the US Department of Justice allowed Microsoft to place so many provisions in the agreement that can be used to undermine the free software movement. Note for example that under J.1 and J.2 of the proposed final order, Microsoft can withhold technical information from third parties on the grounds that Microsoft does not certify the "authenticity and viability of its business," while at the same time it is describing the licensing system for Linux as a "cancer" that threatens the demise of both the intellectual property rights system and the future of research and development."

As the most powerful corporation in the software industry today, Microsoft should be forced to provide equal access to information to anyone, regardless of whether their business model meets Microsoft's approval.

Failure to Punish Illegal Actions

In addition, the proposed settlement does nothing to punish Microsoft's illegal monopolistic tactics. Microsoft has willingly

abused its position in the marketplace and it should be punished. At the very least, it would be appropriate to fine Microsoft for their actions. In addition, Microsoft should be forced to divest itself of those technologies in which it has used its monopoly power to gain a controlling presence. Microsoft should not be allowed to reap the benefits of its illegal actions.

Please consider my comments as a vote against the proposed settlement. Thank you.
Sincerely,

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